

Sana Clara Pueblo, New Mexico

Joint Powers Agreement Between the Pueblo of Santa Clara and the Environmental Improvement  
Division of the Health Department of New Mexico

Contact: Joe Little

Water Resources, Bureau of Indian Affairs

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Adopted 1986

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## WELLHEAD PROTECTION FOR SANTO DOMINGO PUEBLO

Table 4-2.

Example of joint powers agreement.

### JOINT POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT is entered into duplicate this 2nd day of July, 1986, by and between the PUEBLO OF SANTA CLARA, a federally~recognized tribe of Indians located within the exterior boundaries of the State of New Mexico, hereinafter referred to as "Pueblo," and the ENVIRONMENTAL IMPROVEMENT DIVISION OF THE HEALTH AND ENVIRONMENTAL DEPARTMENT OF THE STATE OF NEW MEXICO, an agency of the State of New Mexico, hereinafter referred to as "Division," with respect to regulation of nonIndians (herein defined as both nonIndians and Indians who are not members of or residents in Santa Clara Pueblo) regarding improper "seepage" and "refuse" (solid waste) disposal (as defined by the EIB Liquid Waste Disposal Regulations, the Solid Waste Management Regulations, and the New Mexico Water Quality Control Commission Regulations) on the Santa Clara Reservation (hereinafter referred to as the "Reservation"), with reference to the following facts:

#### Recitals

WHEREAS both parties to this Agreement share common concerns and responsibilities for the health, welfare, safety, and environment of all citizens of the State of New Mexico; and

WHEREAS the Pueblo has both proprietary rights and governmental powers relevant to environmental regulation of both Indian and nonIndian activities on the Reservation; and

WHEREAS the question of whether and to what extent the Division has jurisdiction to regulate

non-Indian activities on the Reservation has been and presumably will continue to be a source of good faith disagreement between the parties, both in general and with respect to particular cases that arise from time to time; and

WHEREAS it appears to the parties that a joint powers agreement provides a mechanism whereby the parties can carry out their common objective of protecting the health, welfare, safety, and environment of all citizens of the State of New Mexico, without requiring either party to surrender its legal position on the disputed question of the Division's jurisdiction over non-Indian activities on the Reservation; and

WHEREAS both of the parties are empowered by law to enter into a joint powers agreement, such as this Agreement, with respect to environmental protection and regulation on Pueblo lands located within the State of New Mexico;

NOW, THEREFORE, the parties mutually agree to the following terms, conditions, and provisions:

#### Terms and Conditions

I. The parties hereby designate the Pueblo as the investigatory agency of the parties, with primary responsibility for discovering and documenting improper or illegal acts of septage or refuse disposal.

4-19

Table 4-2. Continued.

2. In carrying out its investigatory responsibility on behalf of the parties, the Pueblo shall determine whether, in each instance, tribal law is applicable or appropriate to apply. Where tribal law is applicable or appropriate to apply, then the matter will be the sole responsibility of the Pueblo. Where tribal Law is not applicable or the Pueblo does not desire to utilize it, the Pueblo will forward the evidence to the Division.

3. The parties hereby designate the Division as the enforcement agency of the parties, with primary responsibility for legal enforcement of state statutes pertaining to improper or illegal acts of septage or refuse disposal, where tribal law does not apply. The Pueblo will assist the Division with presentation of evidence during legal proceedings. If, at any time, the Pueblo should conclude that the Division is not conducting its regulatory activities in a manner consistent with

the best interests of the Pueblo, the Governor of the Pueblo may so inform the Director of the Division, who shall then make their best efforts to resolve such a dispute. In the event that the Director and the Governor are not able to resolve the dispute to their mutual satisfaction, then the Pueblo may withdraw the disputed activity from coverage under this Agreement, by informing the Division in writing of the Pueblos decision to opt out of the Agreement with respect to the disputed regulated activity. It is mutually understood that the foregoing right of the Pueblo to "opt out" of the Agreement is intended to give the Pueblo the flexibility of withdrawing any given regulatory activity from coverage under this Agreement, while continuing the Agreement in effect as to other pending or future regulatory activities not in dispute between the parties.

4. In addition to the Pueblo's right to "opt out" of the Agreement on a case-by-case basis, as provided in the preceding paragraph, either party is free to terminate the Agreement in its entirety at any time, with or without cause, merely by giving written notice to the other party of the terminating party's decision to that effect. No minimum notice period is required for such a termination of this Agreement, which shall be accomplished only by the Governor of the Pueblo or the Director of the Division, or their duly authorized designates.

5. The environmental standards or requirements to be administered by the Division under this Agreement shall--be only those derived from the Liquid Waste Disposal Regulations (Section 2-400), the Solid Waste Management Regulations (Section 10-D), and the Water Quality Control Commission Regulations (Section 2-ZOI) and supporting statutes of the State of New Mexico, but shall also take into account any relevant provision of the constitution, statutes, and regulations of the Pueblo, as well as any applicable provisions of federal law. In the event that either tribal law or federal law should impose requirements which are arguably more stringent than state-law requirements, then the Division shall apply the more stringent requirements; provided, that in any case where it may appear to the Pueblo that the best interests of the Pueblo would not be served by applying requirements more stringent than those imposed by state law, the Division will apply the less stringent state-law requirements, upon certification by the Pueblo that the application of state-law requirements is desired by the Pueblo and is not in fatal conflict with federal or tribal law, as interpreted in good faith by the Pueblo.

6. By designating the Division as the enforcement agency for purposes of administering the subject matter of this Agreement, the parties do not intend to diminish in any way the powers of the Pueblo or agencies of the Pueblo which may have environmental protection responsibilities.

4-20

7. The parties intend that this Agreement shall create rights only in the two contracting parties, and that this Agreement shall not be understood or construed so as to create any rights in or on behalf of any third party. The parties agree that this Agreement does not impair or alter the independence, sovereignty, or unique legal status of the Pueblo.

a. The parties do not intend that this Agreement shall create or impose any financial obligation on either party, it being mutually understood and agreed that each party shall bear its own costs as to all matters covered by this Agreement.

9. This Agreement shall become effective when signed both by the Director of the Division and by the Governor of the Pueblo, together with any further approvals that may be required under state, tribal, or federal law pertaining to joint powers agreements such as this Agreement.

10. The term of this Agreement is indefinite, it being mutually agreed that the Agreement shall continue in effect until terminated by one or both parties pursuant to the provisions of Paragraph 4 above.

PUEBLO OF SANTA CLARA

By:  
Charles Suazo  
Governor

Dated:  
ENVIRONMENTAL IMPROVEMENT  
DIVISION OF THE HEALTH AND  
ENVIRONMENTAL DEVELOPMENT OF  
THE STATE OF NEW MEXICO

By: Denise Fort Director